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In re Application of Theoharides, Theoharis	: DECISION ON
Application No.: 10/811,826	:
Filed: 30 March 2004	: PETITION
Attorney Docket No.: 2003133.126US1	:
For: ANTI-INFLAMMATORY COMPOSITIONS	: UNDER 37 CFR 1.78(a)(3)
FOR MULTIPLE SCLEROSIS	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed 13 February 2009., to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to prior-filed non-provisional applications.

The petition is **DIMISSED**.

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) The reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) The surcharge set forth in § 1.17(t); and
- (3) A statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The amendment to the specification filed on 24 September 2008 is improper because it instructs the Office to delete a paragraph in the specification that does not exist. It is noted that the purported preliminary amendment to the specification filed on 30 March 2004 was not entered because the amendment was not in compliance with 37 CFR 1.121(h). Accordingly, the 24

September 2008 amendment incorrectly refers to the 30 March 2004 amendment which was not entered.

Furthermore, the priority claim to application PCT/US02/00476 appears to be improper because application PCT/US02/00476 was not pending at the time the present application was filed.

Application PCT/US02/00476 claimed a priority date of 30 January 2001, and application PCT/US02/00476 thus became abandoned as to the United States on July 31, 2003 (i.e. after the expiration of thirty months from the priority date). The present application was not filed until 30 March 2004.

Before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition and either an Application Data Sheet (36 CFR 1.76(a)(5)) or a proper amendment (complying with the provisions of 37 CFR 1.121) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:


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Any questions concerning this matter may be directed to Brian Whiteman at 571-272-6095.

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